

AMENDMENT 2 TO
MEMORANDUM OF AGREEMENT
NAT-I-1427
BETWEEN THE
FEDERAL AVIATION ADMINISTRATION
DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA
AND THE
CIVIL AVIATION AUTHORITY
REPUBLIC OF KENYA

ARTICLE I—GENERAL

Pursuant to the terms of Article VIII of Memorandum of Agreement NAT-I-1427 (the "Agreement") between the Federal Aviation Administration ("FAA") of the Department of Transportation of the United States of America and the Kenya Civil Aviation Authority ("KCAA") of the Republic of Kenya (collectively, the "Parties"), the Parties agree to amend the Agreement as follows:

A. Article VI, Financial Provisions, shall be replaced with the following:

ARTICLE VI—FINANCIAL PROVISIONS

Each annex or appendix shall describe the specific financial arrangements for the technical assistance to be provided. However, all financial arrangements shall be subject to the following:

A. Prior to the performance of any services by the FAA, the KCAA shall pay to the FAA the estimated cost of providing the services and an administrative overhead charge in accordance with the provisions set forth in this Agreement and its annexes and appendices.

1. In the event that the FAA does not receive the payment within the time specified in the applicable annex or appendix, the FAA shall automatically terminate the technical assistance project and forward a statement of account for the actual costs incurred, including an administrative overhead charge, in preparing to provide the technical assistance. The KCAA shall pay any such statement of account.

2. The FAA may, in its sole discretion and on a case-by-case basis, waive the required prepayment. In such cases, the FAA shall submit a statement of account to the KCAA for all costs, including an administrative overhead charge, incurred by the FAA in providing the services.

B. Notwithstanding any other provision of this Agreement, the FAA may, in its sole discretion and on a case-by-case basis:

1. Waive reimbursement by the KCAA of all or a portion of the cost of providing services, including the administrative overhead charge, under the annexes and appendices to this Agreement. The details of any such waiver shall be set forth in the appropriate annex or appendix.

2. Accept reimbursement from a third party or another agency of the U.S. Government in lieu of reimbursement by the KCAA of all or a portion of the cost, including the administrative overhead charge, of providing services under the annexes and appendices to this Agreement. The details of any such acceptance of payments shall be set forth in the appropriate annex or appendix.

C. The FAA has assigned agreement number NAT-I-1427 to identify this Agreement. This number and the billing number assigned to each annex or appendix, if applicable, shall be referenced in all correspondence and bills related to this Agreement.

D. Upon completion of the services, the FAA shall submit a statement of account to the KCAA detailing the actual cost of providing the services, including an administrative overhead charge. Each statement of account will be delivered to the address specified in the respective annex or appendix.

1. If the statement of account shows that the actual cost of providing the services is greater than the estimated cost paid by the KCAA, the KCAA shall pay the balance due to the FAA.

2. If the statement of account shows that the actual cost of providing the services is less than the estimated cost paid by the KCAA, the FAA shall either refund the difference to the KCAA, apply the difference to any unpaid balances owed by the KCAA under the Agreement, or hold the balance as a deposit against any future work under this Agreement, as agreed to by the Parties.

E. Payment of a balance due must be received by the FAA within sixty (60) days after the date the FAA issues a statement of account. In the event that payment is not received by the FAA within such time, the FAA shall assess late payment charges – i.e., interest, penalties, and administrative handling charges – in accordance with U.S. Treasury Department regulations. The FAA shall assess additional late payment charges for each additional thirty (30) day period, or portion thereof, during which payment is not received. The KCAA shall pay any such late charges.

F. All payments shall be made in U.S. dollars and may be made either by check or electronic funds transfer. Checks shall be drawn on a U.S. bank and forwarded to the FAA at the address specified in the applicable annex or appendix. Electronic funds transfers shall be made in accordance with the instructions set forth in the applicable annex or appendix. All payments shall include a reference to the assigned agreement number and billing number.

G. The FAA reserves the right to suspend all work under this Agreement if there is an outstanding balance for work performed or services rendered under any of its annexes or appendices.

H. In the event of a termination of the Agreement or any of its annexes or appendices by either Party under Article X of this Agreement, the KCAA shall pay:

1. All costs incurred by the FAA in providing, or in preparing to provide, the technical assistance prior to the date of such termination, including an administrative overhead charge; and

2. All termination costs incurred by the FAA during the 120-day close-out period.

B. Article VII, Liability, shall be replaced with the following:

ARTICLE VII—IMMUNITY AND LIABILITY

A. The United States, including the FAA and all other agencies and instrumentalities of the United States (collectively "the United States"), assumes no liability for any claim, loss, damage, injury, or death arising out of or relating to this Agreement.

B. The KCAA, on behalf of the Republic of Kenya, waives any and all claims against the United States and any current or former officers or employees of the United States for any and all loss, damage, injury, or death arising out of or relating to this Agreement and agrees that the Republic of Kenya shall bring no claim or legal proceeding of any kind against any of the above entities or persons for any such claim, loss, damage, injury, or death.

C. The KCAA, on behalf of the Republic of Kenya, agrees that the United States and all current and former officers and employees of the United States shall be immune from the jurisdiction of all courts and tribunals of the Republic of Kenya for any claim, loss, damage, injury, or death arising out of or relating to this Agreement.

D. The KCAA, on behalf of the Republic of Kenya, further agrees to indemnify the United States and any current or former officer or employee of the United States for any judgments, settlements, or awards paid by them and all costs (including attorneys' fees) incurred by them as a result of any claim or legal proceeding of any kind brought by a third party arising out of or relating to this Agreement.

ARTICLE II—ENTRY INTO FORCE AND TERMINATION

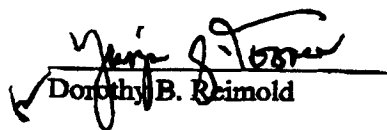
This Amendment shall enter into force on the date of the last signature.

ARTICLE III—AUTHORITY

The FAA and the KCAA agree to the provisions of this Amendment as indicated by the signatures of their duly authorized representatives.

FEDERAL AVIATION ADMINISTRATION
DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA

BY:


Dorothy B. Reimold

TITLE: Acting Assistant Administrator
for International Aviation

DATE: AUG 18 2009

KENYA CIVIL AVIATION AUTHORITY
REPUBLIC OF KENYA

BY:


Col. (Retired) Hilary K. Kioko

TITLE: Director General

DATE: 26 August 2009

